

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 473

Introduced by Assembly Member Ammiano

February 19, 2013

An act to add Chapter 18 (commencing with Section 26000) to Division 9 of the Business and Professions Code, relating to medical ~~cannabis~~ *marijuana*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 473, as amended, Ammiano. Medical ~~cannabis~~ *marijuana*: state regulation and enforcement.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

This bill would create the Division of Medical ~~Cannabis~~ *Marijuana* Regulation and Enforcement within the Department of Alcoholic Beverage Control. The bill would grant the division all power necessary to, among other things, establish statewide standards for the cultivation, manufacturing, testing, transportation, distribution, and sales of medical ~~cannabis~~ *marijuana* and medical ~~cannabis~~ *marijuana* products and a statewide fee scale in relation to these activities. The bill would require

the division to assist in the development of uniform policies for the taxation of medical-cannabis marijuana businesses and establish a licensing-structure mandatory commercial registration program, as specified, which would include an identification card program. The

This bill would authorize the division to assess penalties for violation of these provisions. The bill would establish the Medical Marijuana Fund and would require deposit of fees and penalties into distinct accounts within the fund. The bill would continuously appropriate moneys within the fees account to the division for the purposes of administering the program. The bill would require the division to work in conjunction with law enforcement entities throughout the state to implement and enforce the rules and regulations regarding medical cannabis marijuana and to take appropriate action against businesses and individuals who fail to comply with the law. The bill would specify that its provisions are severable.

The bill would make certain violations of its provisions a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 18 (commencing with Section 26000)
2 is added to Division 9 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 18. MEDICAL-CANNABIS MARIJUANA REGULATION

6
7 Article 1. General Provisions

8
9 26000. It is the intent of the Legislature in enacting this chapter
10 to provide for the comprehensive regulation of the cultivation,
11 manufacturing, testing, transportation, distribution, and sale of

1 medical cannabis and the enforcement of laws relating to these
2 activities.

3 26002. For the purpose of this chapter:

4 (a) “Division” means the Division of Medical—Cannabis
5 Marijuana Regulation and Enforcement.

6 (b) “Identification program” means the universal identification
7 card program for ~~qualified patients and persons engaged in business~~
8 ~~operations related to medical cannabis~~ mandatory commercial
9 restraints.

10 (c) “Mandatory commercial registrant” means any individual,
11 partnership, joint venture, association, limited liability company,
12 corporation, estate, trust, receiver, syndicate, or any other group
13 or combination thereof acting as a unit, or any employee thereof,
14 that operates any facility, building, structure, or location where
15 medical marijuana is grown, possessed, stored, manufactured,
16 tested, or sold, other than a location or building in which a patient
17 or a patient’s primary caregiver, as defined by the Compassionate
18 Use Act of 1996, is growing medical marijuana exclusively for
19 patient medical use and not for sale.

20 (d) “Testing and labeling” means mandatory labeling and a
21 quality assurance plan in place that address all of the following:

22 (1) Dosage.

23 (2) Microbiological contaminants, including, but not limited
24 to, all of the following:

25 (A) Pesticides.

26 (B) Herbicides.

27 (C) Pathogens.

28 (D) Molds.

29 (E) Fungi.

30 (3) Random sample testing.

31 (4) Handling, care, and storage.

32 (5) Date and location of production and manufacturing.

33 (e) “Fund” means the Medical Marijuana Fund established
34 pursuant to Section 26028.

35
36 Article 2. Administration

37
38 26020. (a) There is hereby created in the Department of
39 Alcoholic Beverage Control the Division of Medical—Cannabis

1 *Marijuana* Regulation and Enforcement. The division shall be
2 administered by a chief executive to be appointed by the director.

3 *(b) The chief executive shall be the appointing authority of all*
4 *employees within the division. All heads of subdivisions or advisory*
5 *committees within the division shall be responsible to the chief*
6 *executive for the proper carrying out of the duties and*
7 *responsibilities of their respective positions.*

8 26022. The division shall have all power necessary for
9 administration of this chapter, including, but not limited to, the
10 following:

11 (a) Establishing statewide standards for the cultivation,
12 manufacturing, testing, transportation, distribution, and sales of
13 medical-~~cannabis~~ *marijuana* and medical-~~cannabis~~ *marijuana*
14 products.

15 (b) Establishing a scale of fees, to be imposed by the state, for
16 the cultivation, manufacturing, testing, transportation, distribution,
17 and sale of medical-~~cannabis~~ *marijuana* and medical-~~cannabis~~
18 *marijuana* products. *The division may charge separate fees for*
19 *each mandatory commercial registration application for*
20 *cultivation, manufacturing, transportation, distribution, and sales.*
21 *The total fees imposed pursuant to this chapter shall not exceed*
22 *the total costs of administering this chapter.*

23 (c) Adopting, amending, and rescinding reasonable regulations,
24 special rulings, and findings as necessary for the regulation and
25 control of the cultivation, manufacturing, testing, transportation,
26 distribution, and sale of medical-~~cannabis~~ *marijuana* and to govern
27 the procedures of the division to exercise the powers and perform
28 the duties conferred upon it by this chapter, in accordance with
29 the provisions of Chapter 3.5 (commencing with Section 11340)
30 of Part 1 of Division 3 of Title 2 of the Government Code.

31 *(d) Approving or denying mandatory registration applications*
32 *for cultivation, manufacturing, testing and labeling, transportation,*
33 *distribution, and sale of medical marijuana pursuant to this*
34 *chapter.*

35 *(e) Suspending, fining, restricting, or revoking mandatory*
36 *commercial registration upon a violation of this chapter or a rule*
37 *or regulation adopted pursuant to this chapter.*

38 *(f) Imposing any penalty authorized by this chapter or any rule*
39 *or regulation adopted pursuant to this chapter.*

1 (g) Taking any reasonable action with respect to a mandatory
2 commercial registration application in accordance with procedures
3 established pursuant to this chapter.

4 (h) Hearing and determining, at a public hearing, any appeals
5 of mandatory commercial registration application denial or
6 renewal application denial and any complaints against a
7 mandatory commercial registrant.

8 (i) Administering oaths and issuing subpoenas to require the
9 presence of individuals and the production of papers, books, and
10 records necessary to the determination of any hearing. Any hearing
11 pursuant to this section shall be conducted in accordance with
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code.

14 (j) Maintaining the confidentiality of any information obtained
15 from a mandatory commercial registrant related to the medical
16 marijuana patients or caregivers in strict compliance with the
17 federal Health Insurance Portability and Accountability Act (42
18 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical
19 Information Act (Part 2.6 (commencing with Section 56) of Division
20 1 of the Civil Code), and the Insurance Information Privacy
21 Protection Act (Article 6.6 (commencing with Section 79) of
22 Chapter 1 of Part 2 of Division 1 of the Insurance Code).

23 (k) Developing any forms, identification cards, and applications
24 that are necessary or convenient in the reasonable discretion of
25 the division for the administration of this chapter or any of the
26 rules or regulations adopted pursuant to this chapter.

27 (l) Overseeing the operation of the Medical Marijuana Fund
28 established pursuant to Section 26028.

29 (m) Establishing reasonable fees for processing all applications,
30 registrations, notices, or reports required to be submitted to the
31 division. The amount of the fees shall reflect, but shall not exceed,
32 the direct and indirect costs of the division for the administration
33 of this chapter and the rules or regulations adopted pursuant to
34 this chapter.

35 26024. The division shall assist in the development of uniform
36 policies for the taxation of medical-cannabis marijuana businesses.

37 26026. The division shall identify successful regulatory
38 structures for the purpose of supporting cities and counties in
39 appropriately governing activities related to medical-cannabis
40 marijuana.

1 26028. (a) *The Medical Marijuana Fund is hereby established*
2 *within the State Treasury. Notwithstanding Section 16305.7 of the*
3 *Government Code, the fund shall include any interest and dividends*
4 *earned on the money in the fund.*

5 (b) *All fees collected pursuant to this chapter shall be deposited*
6 *into the Medical Marijuana Fees Account, which is hereby*
7 *established within the fund. Notwithstanding Section 13340 of the*
8 *Government Code, all moneys within the Medical Marijuana Fees*
9 *Account are hereby continuously appropriated, without regard to*
10 *fiscal year, to the division solely for the purposes of fully funding*
11 *and administering this chapter, including, but not limited to, the*
12 *costs incurred by the Department of Alcoholic Beverage Control*
13 *for its administrative expenses incurred on behalf of the division.*
14 *From moneys in the account, the division shall reimburse the*
15 *department for those costs.*

16 (c) *All penalties collected pursuant to this chapter shall be*
17 *deposited into the Medical Marijuana Penalties Account, which*
18 *is hereby established within the fund. All moneys within the*
19 *Medical Marijuana Penalties Account shall be available for the*
20 *purposes of this chapter, upon appropriation by the Legislature.*

21
22 Article 3. ~~Licensing~~ *Mandatory Commercial Registration*
23

24 26040. ~~The~~ (a) *By July 1, 2014, the division shall establish a*
25 ~~licensing~~ *mandatory commercial registration program and a fee*
26 *structure for cultivation, manufacturing, testing, transportation,*
27 *distribution, and sale of medical-cannabis marijuana and medical*
28 ~~cannabis~~ *marijuana products, and shall make available mandatory*
29 *commercial registration forms.*

30 (b) *A mandatory commercial registration application or renewal*
31 *shall be approved unless the division determines any of the*
32 *following:*

33 (1) *The applicant fails to meet the requirements of this chapter*
34 *or any regulation adopted pursuant to this chapter.*

35 (2) *The applicant, or any of its officers or directors, is under*
36 *21 years of age.*

37 (3) *The applicant has knowingly answered a question or request*
38 *for information falsely on the application form.*

39 (4) *The applicant, or any of its officers or directors, has been*
40 *convicted in the previous five years of a violent felony, as specified*

1 *in subdivision (c) of Section 667.5 of the Penal Code, a serious*
2 *felony as specified in subdivision (c) of Section 1192.7 of the Penal*
3 *Code, a felony offense involving fraud or deceit, or any other felony*
4 *that, in the division's estimation, would impair the applicant's*
5 *ability to appropriately operate medical marijuana cultivation,*
6 *manufacturing, testing, distribution, or sales.*

7 *(5) The applicant is a licensed physician making patient*
8 *recommendations for medical marijuana.*

9 *(6) The applicant, or any of its officers or directors, has been*
10 *sanctioned by the division for operating unregistered commercial*
11 *medical marijuana activities, or has had a mandatory commercial*
12 *registration revoked in the previous three years.*

13 ~~26042. The licensing program described in Section 24040 shall~~
14 ~~include an identification card program that respects the protections~~
15 ~~of the Confidentiality of Medical Information Act (Part 2.6~~
16 ~~(commencing with Section 56) of Division 1 of the Civil Code)~~
17 ~~and the federal Health Insurance Portability and Accountability~~
18 ~~Act of 1996 (42 U.S.C. Sec. 1320d et seq.).~~

19 *26041. For the purpose of regulating the cultivation,*
20 *manufacturing, testing, transportation, distribution, and sale of*
21 *medical marijuana, the division, in its reasonable discretion, may*
22 *establish various classes or types of registration, including*
23 *distinguishing between operators and employees, for specific*
24 *medical marijuana-related activities, as set forth in this chapter.*

25 *26043. Each mandatory commercial registration application*
26 *approved by the division pursuant to this chapter is separate and*
27 *distinct. An applicant may apply for mandatory commercial*
28 *registration in more than one class of specified medical marijuana*
29 *activities.*

30 *26044. A mandatory commercial registration application*
31 *approved by the division pursuant to this chapter shall be valid*
32 *for a period not to exceed two years from the date of approval*
33 *unless revoked or suspended pursuant to this chapter or the rules*
34 *or regulations adopted pursuant to this chapter.*

35 *26045. Ninety days prior to the expiration date of an existing*
36 *mandatory commercial registration, the division shall notify the*
37 *registrant of the expiration date by first-class mail at the person's*
38 *address of record with the division. A registrant shall apply for*
39 *the renewal of an existing mandatory commercial registration to*
40 *the division not less than 60 days prior to the expiration. The*

1 *division, in its discretion and based upon reasonable grounds,*
2 *may waive the 60-day time requirement set forth in this section.*
3 *The division shall act upon a timely filed mandatory commercial*
4 *registration renewal application within 10 days prior to the*
5 *expiration of the registration.*

6 26046. *An application for mandatory commercial registration*
7 *shall include, but shall not be limited to, all of the following:*

- 8 (a) *A plan for conformance with testing.*
- 9 (b) *A plan to address security for premises where marijuana*
10 *cultivation, manufacturing, testing, distribution, or sales will occur.*
- 11 (c) *A plan for conformance with local zoning requirements.*
- 12 (d) *Protocols to prevent unlawful diversion of marijuana.*

13 26047. *The division shall approve, and contract with, one or*
14 *more laboratories that can document compliance with industry*
15 *best practices to provide plan-consulting services and to conduct*
16 *laboratory and testing services to determine compliance with the*
17 *requirements set forth in subdivision (d) of Section 26002.*

18 26048. *The division shall approve cultivation registration only*
19 *in conjunction with the city, county, or city and county land use*
20 *authority in which the cultivation occurs, where the city, county,*
21 *or city and county addresses compliance with relevant state and*
22 *federal environmental impact laws and regulations, including, but*
23 *not limited to, all of the following:*

- 24 (a) *Clear-cutting.*
- 25 (b) *Road building.*
- 26 (c) *Water diversion.*
- 27 (d) *Use of chemicals.*

28 26049. *All mandatory commercial registrants are exempt from*
29 *arrest, prosecution, or sanctions under Sections 11357, 11358,*
30 *11359, 11360, 11366, 11366.5, 11379.6, and 11570 of the Health*
31 *and Safety Code, unless they do not possess a valid registration*
32 *under this chapter or the conduct in question is not within the*
33 *scope of the registration.*

34 26050. (a) *This chapter shall not apply to, and shall have no*
35 *diminishing effect on, the rights and protections granted to*
36 *individual patients and primary caregivers pursuant to the*
37 *Compassionate Use Act of 1996.*

38 (b) *Individual patients and caregivers cultivating marijuana at*
39 *their private residences exclusively for patient medical use who*
40 *do not sell or charge for the cultivation of marijuana are not*

1 *considered commercial registrants, and are exempt from*
2 *mandatory commercial registration.*

3 *26051. A facility, building, structure, or location operating in*
4 *conformance with local zoning requirements as of the effective*
5 *date of this chapter may continue its operations until such time as*
6 *its application for mandatory commercial registration has been*
7 *approved or denied under this chapter.*

8
9 Article 4. Enforcement

10
11 *26060. (a) The division shall work in conjunction with law*
12 *enforcement entities throughout the state for the purpose of*
13 *implementing and enforcing the rules and regulations regarding*
14 *medical-cannabis marijuana and taking appropriate action against*
15 *businesses and individuals who fail to comply with the law.*

16 *(b) Nothing in this chapter shall prevent a city, county, or city*
17 *and county from enforcing a zoning ordinance or law of general*
18 *application.*

19 *26062. Commencing January 1, 2015, no person, except for*
20 *mandatory commercial registrants, shall offer for sale any product*
21 *containing marijuana, or operate any facility, building, structure,*
22 *or location where medical marijuana is grown, processed, stored,*
23 *manufactured, tested, or sold, other than a location or building in*
24 *which a patient or a patient's primary caregiver, as defined by the*
25 *Compassionate Use Act of 1996, is growing medical marijuana*
26 *exclusively for patient medical use and not for sale.*

27 *26063. (a) Commencing January 1, 2015, any product*
28 *containing marijuana that is offered for sale shall be subject to*
29 *the testing and labeling requirements set forth in subdivision (d)*
30 *of Section 26002.*

31 *(b) No person shall steal or fraudulently use any mandatory*
32 *commercial registrant's identification card or registration status*
33 *to acquire, possess, cultivate, transport, use, produce, or distribute*
34 *marijuana.*

35 *(c) No person shall counterfeit, tamper with, or fraudulently*
36 *produce an identification card or registration status.*

37 *(d) Any person who violates this section, or Section 26062, is*
38 *guilty of a misdemeanor and shall be subject to the following*
39 *penalties:*

1 (1) For the first offense, imprisonment in the county jail for no
2 more than six months or a fine not to exceed one thousand dollars
3 (\$1,000), or both.

4 (2) For a second or subsequent offense, imprisonment in the
5 county jail for no more than one year or a fine not to exceed one
6 thousand dollars (\$1,000), or both.

7 26064. Any person operating an unregistered commercial
8 medical marijuana facility, building, structure, or location may
9 be subject to civil penalties of up to twenty-five thousand dollars
10 (\$25,000), and the division may order the destruction of any
11 marijuana being cultivated, manufactured, or possessed in
12 violation of this chapter. Any civil fines collected pursuant to this
13 section shall be deposited into the Medical Marijuana Penalties
14 Account within the fund.

15 26065. No funds shall be spent by state or local officials to
16 assist federal authorities in enforcing federal marijuana
17 prohibitions with regard to activities carried out by mandatory
18 commercial registrants in compliance with the provisions of this
19 chapter. Nothing in this chapter shall be construed to limit a law
20 enforcement agency's ability to investigate unlawful activity in
21 relation to a mandatory commercial registrant.

22 SEC. 2. The provisions of this act are severable. If any
23 provision of this act or its application is held invalid, that invalidity
24 shall not affect other provisions or applications that can be given
25 effect without the invalid provision or application.

26 SEC. 3. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.